IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1395 of 1985

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJ STATE ROAD TRANSPORT CORPN - Appellant(s)
Versus
LALITABEN KANTILAL LAD & 5 - Defendant(s)

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Appearance :

MS JYOTI MEHTA FOR MR HARDIK C RAWAL for Appellant(s) : 1
MR AMRISH PANDYA for DR BHATT for Respondent(s) : 1 - 5.
None for Respondent : 6,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 29/06/2007

ORAL JUDGMENT

Ms. Jyoti Mehta under the authority of Shri Hardik C. Raval, learned counsel for the

appellant; Shri Amrish Pandya under the authority of Shri G.D. Bhatt, learned counsel for the respondents no. 1 to 5;none for the respondent no.6.

2. The appellant-GSRTC, being aggrieved by the award dated 24th April, 1995 passed by the M.A.C.Tribunal, Valsad at Navsari in M.V.Claim Petition No. 208/83 is before this Court with a submission that the learned Tribunal was absolutely unjustified in making award against the interest of the appellant.

3. The short facts necessary for disposal of the present appeal are that husband of the applicant no.1 and father of minor children-applicants no. 2 to 5 was walking along Gandhi Road of Bilimora town. According to the claimant, S.T. Bus GTM No. 4968 knocked him down. As a result of the accident and the injuries suffered by the deceased, he died on the spot. The dependents filed claim for sum of Rs. 2.00 lacs. After notice, the driver and the Corporation appeared in the Court and submitted that the said bus was not involved in

the accident and no liability could be fixed on their head. It is not in dispute before me that except one Joravarkhan Pathan, who was claiming himself to be an eye witness, no other eye witness has been examined. Joravarkhan Pathan is educated up to 4th standard, he did not state before the Court that he could note down the number of the bus. However, it was argued before the lower court that as the bus did not stop after the accident, Joravarkhan Pathan could not note down the number of the offending vehicle.

4. Learned Tribunal, in para-7 of is judgment has observed that the S.T. Corporation is running city buses in Bilimora town, the city buses have read paint over them, while outstandion buses are painted green.

5. On the basis of the statement of Joravarkhan Pathan, the Tribunal held that as Joravarkhan had stated that he had seen red colour bus knocking down the pedestrian, it must be a bus belonging to the GSRTC. On certain calculation of time, the Tribunal held that it was time for passing of a particular city bus, therefore,

such bus should be held responsible.

6. In the opinion of this Court, though some guess work is permissible and cases are to be decided on strength of preponderance of probability but such jurisdiction is not conferred upon the Tribunal to presume everything. Simply because the vehicle was painted red and was to pass from a particular road at a particular time, none could presume that such bus only might have passed from that area. Presumption should be legal presumption. It must be based on certain facts, presumption has its own limits. One, while presuming facts, cannot go astray nor can become whimsical. Taking into consideration the evidence available on the record, I must hold that the claimants have miserably failed in connecting the accident with the bus no. GTM 4968.

7. The Tribunal was unjustified in holding the driver and the GSRTC answerable to the claim of the claimants.

8. The appeal is allowed. The award made against the interest of the GSRTC is quashed.

Consequently, under Order XLI Rule 33 of the Code of Civil Procedure, I hold that the driver of the S.T. Bus would also not be liable to pay the money.

[R.S. GARG, J.]

pirzada/-